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Via Hand Delivery

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **Network USA Comments**
PR Docket No. 92-235

Dear Ms. Searcy:

Transmitted herewith, on behalf of Network USA, please find enclosed the original and five (5) copies of its Comments in the above-referenced Rulemaking proceedings.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,


Frederick M. Joyce

FMJ/jml
Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Replacement of Part 90 by Part 88
to Revise the Private Land Mobile
Radio Services and Modify the
Policies Governing Them

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PR Docket No. 92-235

To: The Commission

COMMENTS OF NETWORK USA

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Date: May 28, 1993

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SUMMARY

Network USA is not only the holder of several private carrier paging ("PCP") licenses, but has used just one shared PCP frequency to build a seamless nationwide paging operation, by affiliating with small local PCP operators operating on the same shared channel. Network USA has grown quickly to become the second largest PCP service provider in the country, and thus is particularly interested in this proceeding.

Network USA supports the Commission's goals of spectrum efficiency and encouragement of new technologies, and approves of Part 88 proposals to consolidate Private Land Mobile Radio ("PLMR") services and to exempt 33 paging-only frequencies from narrowbanding requirements. However, PCP services should be exempted from all Part 88 proposals: the simple, consistent rules as they currently exist in Part 90 have nurtured the phenomenal growth of PCP and are better suited to its unique needs. In the alternative to exempting PCP from Part 88, Network USA submits that PCP should be designated as a fourth separate service, with its own rules, within Part 88.

Network USA urges the Commission to retain higher output power/antenna height limits for all PCP frequency bands, rather than placing severe restrictions on power for some bands, thus diminishing the business value of those channels. Rather than promoting spectrum efficiency, new restrictions would force PCP operators on lower frequencies to apply for and construct expensive additional transmitting sites just to retain their

previous service areas and their customer bases.

Network USA also strongly disagrees with the Commission's proposal to allow multiple frequency coordinators for PLMR services, and urges the FCC to select one coordinator for each service. The FCC should also adopt standards in the Rules for adoption of coordinators' recommendations. The lack of standards has caused financial and operational hardship to PCP operators. As shared frequencies become more congested, the danger of harmful interference among co-channel licensees will increase. Providing frequency coordinators, applicants and licensees with guidance as to when a coordinator's recommendation will or will not be approved would promote spectrum efficiency, help to resolve disputes among co-channel licensees and eliminate uncertainty for applicants waiting to begin service to the public.

Network USA suggests that the FCC adopt rules guaranteeing just and reasonable telephone interconnect rates to PCP service providers. Although PCPs are entitled to the same rates from telephone companies as radio common carriers ("RCCs"), they are often subjected to blatant discrimination in rates and services. An affirmation in the Rules of PCP's co-equal status with RCCs would help resolve numerous rate discrimination disputes before state and local utility commissions, the courts and the FCC.

Finally, the language in Part 88 defining user eligibility for PLMR services appears to allow service to individuals for personal use. Network USA requests clarification on this point,

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and would agree with the FCC's change in philosophy to provide private radio services to anyone who needs them.

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PR Docket No. 92-235

To: The Commission

COMMENTS OF NETWORK USA

Network USA, through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Commission's above-referenced Notice of Proposed Rulemaking ("Notice"). Network USA supports some of the rule modifications recommended in the Notice, and has some suggestions for eliminating or modifying others, for the following reasons:

I. Statement of Interest.

Network USA is uniquely qualified to comment on proposed changes to private land mobile radio ("PLMR") services. Network USA has done with private carrier paging ("PCP") service what no other paging company had previously accomplished: it has successfully "networked" together hundreds of small, local PCP

small operators with licenses to operate on the same frequency, and offered them affiliation. Where previously they could provide PCP service only as far as their local transmitters could send a radio signal, now they can offer their customers statewide, regional or nationwide service wherever any member of the Network USA network is located. Network USA has invested millions of dollars in the design, construction and operation of this network. Consequently, it has rapidly grown to become the second largest PCP operator in the nation. See Radio Communications Report, April 19, 1993, p.10.

B. How the Network Operates

A customer wishing to page a Network USA or affiliate subscriber dials the Network USA telephone number, which accesses Network USA's automatic paging terminal in Pensacola, Florida. The customer is then asked for the subscriber's identification ("ID") number; when the terminal recognizes the number, the page is transmitted to a satellite, then beamed back to one or more Network USA receive stations nationwide.

From that receive site, the page is sent out over one of many TNPP networks, comprised of Network USA subsidiaries and affiliates who have "tied" their terminals together to create wider coverage for their paging systems. To promote spectrum efficiency, Network USA offers its customers a variety of paging "zone" sizes; the page is transmitted only through the transmitters of the requested zone.

Network USA has built its operation true to the goals of the

FCC in creating PCP service: Network USA and its affiliates provide tailored paging services to a wide variety of customers at extremely competitive prices. The network relies on the collective strength and harmony of many small affiliates, whose own businesses benefit from the increased coverage their affiliation with Network USA provides.

Network USA's and its affiliates' businesses rely upon timely and sensible frequency coordination processes, and a regulatory environment that is fundamentally concerned with protecting shared-use operators from harmful interference and unnecessary regulatory burdens. Thus, the rules proposed in the FCC's Notice would certainly have an impact on Network USA's PCP business. Due to Network USA's significant investment in PCP services and its reliance upon the FCC to assure the continued vitality and viability of shared-use operations, Network USA is particularly interested in this proceeding.

II. Summary of Notice.

In its Notice, the FCC aptly recognizes the growing importance of PLMR services to a wide variety of users across the country, and the need for new rules to facilitate efficient use of the spectrum and to accommodate growth of new technologies. The Commission proposes to completely replace Part 90 of its Rules with a new Part 88: this will surely be a complex undertaking.

While endeavoring to simplify the PLMR Rules, the Notice

also proposes to incorporate several major changes into PLMR regulation. Briefly put, they are as follows:

1. The Commission would consolidate the 19 current PLMR services into three: Non-Commercial, Public Safety and Specialized Mobile Radio ("SMR"); the latter service group would include most current commercial licensees such as PCP operators. Each of these services would have a pool of frequencies assigned to it; a General Category Pool of additional frequencies would be available to all three services. Notice at ¶ 17.

One-way paging communications would be allotted 33 paging-only frequencies, to be included in the General Category Pool. See proposed § 88.1063(b). Paging licensees would also be eligible for other frequencies on a secondary basis (proposed §

would be lower still where antenna heights are greater than 197 feet above average terrain. Proposed § 88.429.

4. The Commission plans to grant a form of exclusivity to licensees in the 150-174 and 450-470 Mhz frequency bands. Through a marketplace mechanism known as "exclusive use overlay" ("EUO"), after obtaining the consent of all other qualified co-channel licensees within 80 km (50 miles), licensees on particularly congested channels could request a limit on the number of licensees able to share a particular channel. Proposed §§ 88.179-88.191. To qualify for an EUO license, licensees would have to meet loading requirements based on their proximity to listed markets. Proposed § 88.187.

5. While planning to retain frequency coordination procedures, the FCC proposes to allow applicants for frequencies below 512 MHz to choose among several coordinators. For example, General Category applicants could use any coordinator now recognized by the Commission. Notice at ¶ 18. Above 800 MHz, responsibility for coordination would continue to rest with NABER and SIRSA. Id.

Network USA supports the Commission's goals of greater spectrum efficiency and the encouragement of new technologies. However, Network USA is concerned that Part 88 proposals will have a detrimental effect on one of private radio's most successful services: PCP. Its comments on these issues are set forth in detail below.

III. PCP Services Should be Exempt from Part 88 Proposals.

Network USA generally supports the Commission's goal of simplifying PLMR rules by consolidating the current services into fewer categories. By pooling available frequencies, the FCC would better equalize the distribution of channels to all PLMR users. The PCP industry, however, has a unique role among private radio services; moreover, Commission Rules governing PCP services have so far been successful in nurturing the industry through its formative years. Network USA submits that, apart from some fine tuning, the PCP rules contained in Part 90 are best left alone.

A. Background

During the brief history of PCP services, the industry has grown phenomenally. Technology has advanced, allowing PCP operators to offer more services, while costs have decreased. PCP now delivers high-quality, low-cost services to hundreds of thousands of customers nationwide. Network USA's own operations not only provide paging services to its own customers; its network expands the reach of low-cost, high-quality paging to the customers of its affiliates and subsidiaries nationwide. With operations both large and small, PCP has fulfilled the Commission's goal of providing tailored paging services to a wide variety of users.

Moreover, this success was accomplished with shared frequencies and with restrictions on user eligibility. Network USA is a perfect example: its entire operation takes place on

just one shared frequency across the country, 152.48 MHz. Thus, there are co-channel users existing side-by-side in the markets in which Network USA has affiliates, and similar networks could be developed on other shared channels.

Operations of all sizes have, for the most part, successfully co-existed on PCP frequencies with a minimum of interference, due to cooperation and effective frequency coordination. PCP has become a viable alternative to radio common carrier ("RCC") paging services, without some of the advantages enjoyed by RCCs. Moreover, PCP operators have provided much-needed competition in states with local paging monopolies or duopolies, by going head-to-head with RCCs for commercial paging customers. Network USA's own operations extend into at least three such regulated states: Tennessee, Alabama and South Carolina.

93-38 (March 12, 1993). The "level playing field" for PCP operators created by the existing Rules could, however, be endangered by some of the provisions of proposed Part 88.

IV. "If It Isn't Broken, Don't Fix It."

Some aspects of PCP regulation should be left alone. The Commission appears to recognize the unique nature of PCP operations, and their historic success, in its exemption of 33 exclusive paging frequencies from the narrowbanding requirements to be imposed on other PLMR services. See proposed §§ 88.1061, 88.1063. Network USA applauds this decision: many of these frequencies are already heavily used by large and small licensees. To force them to convert to narrowband technology would have a severe impact on their investments and on the industry as a whole.

Other Part 88 proposals would not be in the best interests of PCP operators or their customers. Network USA strongly urges the Commission to reconsider its proposals limiting PCP antenna heights and maximum power outputs, and opening private radio frequency coordination to multiple coordinators.

A. Antenna Height/Power Output Restrictions

As currently proposed, Part 88 rules regarding antenna height and power output would have a severe detrimental effect on the PCP industry, and on the multi-million dollar investment of Network USA and its affiliates. Paging-only frequencies below 470 MHz would be limited to a maximum of 300 watts ERP, with

maximum allowed power decreasing as antenna heights increase.

See proposed §§ 88.429(d),(h), 88.1067.

Network USA appreciates the Commission's overall goal for PLMR services of spectrum re-use; however, that goal would not be realized in the case of PCP operations. Instead, licensees with established service areas, who have already made significant investments to develop a customer base, would be forced to immediately apply for more base stations to maintain that service area, at substantial cost in equipment and site leases. The alternative would be to lose many customers to another PCP or RCC operator operating on a higher-output frequency.

Lower-band PCP frequencies would become "inferior" due to these Rules restrictions, since PCP stations operating on the 929-930 MHz band would continue to be allowed up to 1000 watts of ERP. Proposed § 88.429(k). Moreover, the Commission has proposed power levels of up to 3500 watts for 900 MHz PCP operations under the current rules. See Notice of Proposed Rulemaking, PR Docket No. 93-35, Appendix A, proposed § 90.495(b).¹

The proposed disparity in the Rules for different PCP frequencies would erode the level playing field operators now enjoy. The Commission has recognized that higher power levels mean licensees can provide high-quality service to a wider area with fewer transmitters, thus encouraging PCP operators to

¹ The Commission has also proposed maximum power levels of 3500 watts for RCCs, PCPs' closest competition. See Notice of Proposed Rulemaking, CC Docket No. 93-116, April 23, 1993.

develop wide-area systems in direct competition with RCCs. However, to provide these opportunities to 900 MHz PCP licensees, while preventing non-900 MHz operators from enjoying them, is simply unfair and counterproductive to the Commission's goal of fostering the growth of PCP. Network USA requests that the Rules be equalized to allow higher power levels on all PCP frequencies.

B. Frequency Coordination

Network USA strongly opposes the Commission's proposal to open frequency coordination to all current coordinators, and requests that coordination of PCP services remain in the hands of NABER. Network USA submits that the FCC's proposal is inconsistent with its stated goal of spectrum efficiency.

If General Category applicants such as those requesting PCP frequencies were allowed to pick among several coordinators, it is highly unlikely that the PCP spectrum would be used to its best advantage. To allow multiple coordinators to work on applications in the same service, especially one such as PCP with its tremendous volume of applications, is to invite conflicting coordination recommendations. These would inevitably lead to disputes between applicants, and wasteful expense of time and resources by applicants and the Commission to resolve those disputes.

Throughout the history of PCP services, NABER has developed an extensive database of PCP operators, their systems and their use of paging frequencies, as well as an expertise only gleaned from years of working in the PCP service. No other coordinator

can match NABER's experience with PCP services, just as other coordinators have unmatched expertise in the radio services they currently coordinate. Efforts to share database information among coordinators, however well-intentioned, could hardly be accomplished at a fast enough pace to prevent hardship to applicants. Moreover, the necessity of sharing data would no doubt increase coordination fees, while the quality of service decreased.

Although the current frequency coordination system is imperfect, it is a known quantity and one that is largely successful. Today, one qualified coordinator can usually locate for applicants who must share frequencies a channel with adequate available airtime to allow high-quality services to all co-channel customers. This is preferable to a system in which multiple coordinators, working with all types of applicants, would have a competitive incentive to garner as many coordination fees as possible, regardless of the impact on a congested channel.

V. The FCC Should Adopt Standards for Frequency Coordination.

Network USA knows through hard-learned experience that the lack of standards for FCC implementation of coordination decisions has caused financial and operational hardships to PCPs. Network USA urges the Commission to adopt standards in Part 88 governing frequency coordinators' recommendations. Such a provision would promote the goal of spectrum efficiency.

Today, PLMR applicants that submit their applications to frequency coordinators are currently at a disadvantage both in constructing and operating their stations. Due to uncertainties about Commission implementation of coordinator recommendations, applicants who order equipment and take other steps necessary to timely construct stations and begin providing service to the public within the eight-month construction period, do so at the risk that the FCC may or may not affirm the coordinator's recommendation. Moreover, disputes over whether a particular applicant should be allowed to share a congested frequency have often remained unresolved for months while the FCC considers whether it will uphold a coordinator's recommendation.

The problem is that the FCC does not always adopt the coordinator's recommendation; and the Rules offer applicants no guidance as to the circumstances under which the FCC will overturn coordinator recommendations. This is particularly a problem when coordinators have recommended that an applicant select an alternate frequency, or agree to operate with conditions on its license, to protect incumbent licensees from harmful interference. The FCC has been loath to enforce such recommendations.

The FCC's foremost responsibility under the Communications

Act is to "prevent interference between stations." See 47 U.S.C.

coordinator's recommendations in the interest of interference avoidance. At a minimum, such provisions should give applicants and licensees some guidance as to when the FCC will, or will not, enforce a coordinator's decision.

As the PCP industry continues to grow, and shared channels become increasingly congested, these coordination problems will become more vexing. It is time for the FCC to adopt clear and explicit standards governing coordination recommendations.

VI. PCP Should be Granted Separate Status.

If the FCC will not exempt PCP operations from the proposed Part 88 rule changes, Network USA strongly recommends that rules governing PCP operations be consolidated into a fourth, separate PLMR service category for PCPs. The Rules should recognize the unique characteristics and needs of PCP service providers, as well as the historic success of the industry. A separate PCP license category would also ensure consistent rules for all PCP operators regardless of frequency band, thus eliminating many of the disparities referenced herein.

VII. The FCC Should Resolve Telephone Interconnection Disparities.

The FCC should seize this opportunity, in the midst of this monumental effort to revamp Part 90, to correct an historic anomaly that has unfairly saddled private radio licensees with exorbitant interconnect costs. Among the provisions to be included in proposed Part 88 should be one guaranteeing to PCP

operators just and equitable telephone interconnect rates. PCP service providers are entitled, under the Communications Act of 1934, as amended, to the same interconnect rates and services from local telephone companies enjoyed by RCCs; yet, PCPs are often subject to open and acknowledged discrimination. As PCPs continue to compete directly with RCCs in their service areas, the anticompetitive effect of these discriminatory practices will become more pronounced.

The Commission is statutorily empowered under the Communications Act to incorporate PCP licensees' interconnect rights into the Rules. See, e.g., 47 U.S.C. §§ 201(b), 202(a).

commercial users. However, the Notice's proposed language defining PLMR services appears to adopt a new version of eligibility:

The Private Land Mobile Radio Services allow state and local governments, commercial and non-profit organizations to use the electromagnetic spectrum for mobile and ancillary fixed telecommunications to assure safety of life and property, and to improve productivity and efficiency.

Proposed § 88.11 (emphasis added).

The above language appears to allow PCP operators to provide service to individuals for personal use, since most individual customers obtain paging service precisely to "assure safety of life and property [or] to improve productivity and efficiency." If the Commission does intend to remove the "commercial" restriction from PLMR user eligibility,² Network USA would applaud its decision. The FCC's statutory mandate to make available to all the people of the United States a rapid, efficient, nationwide and world-wide radio communications service at reasonable charges, is hampered by arbitrary eligibility restrictions. See 47 U.S.C. § 151. Any user that has a need for PLMR services should be allowed to receive them.

² The Commission's proposal to drop the restriction solely for PCP services, PR Docket No. 93-38, appears to confirm a change in philosophy. However, a final decision has not been released in that rulemaking to this date.

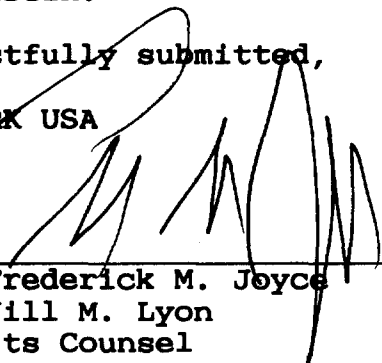
CONCLUSION

FOR ALL THE FOREGOING REASONS, Network USA supports some of the Commission proposals as set forth in the replacement Part 88 of the Rules, such as the exemption of paging-only frequencies from narrowbanding requirements and the consolidation of services, but requests that PCP services be exempt from the operating power/antenna height restrictions and multiple frequency coordinator proposals, and that the Commission take other actions to encourage and protect PCP operations in a manner consistent with the comments made herein.

Respectfully submitted,

NETWORK USA

By:



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Date: May 28, 1993

CERTIFICATE OF SERVICE

I, Dennean Myers-Ferrell, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 28th day of May, 1993, copies of the foregoing Comments of Network USA were mailed, postage prepaid, to the following:

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Federal Communications Comm.
Washington, DC 20554

Commissioner Andrew C. Barrett*
Federal Communications Comm.
Washington, DC 20554

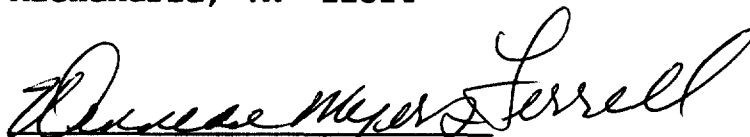
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